

§ 1 General

- (1) Our deliveries and offers are effected exclusively on the basis of our General Terms and Conditions which shall also apply to all future business relations albeit not expressly agreed upon again. We do not accept any contrary conditions or conditions of our customer that diverge from our General Terms and Conditions unless we have expressly consented to the validity of such conditions in writing.
- (2) Our General Terms and Conditions shall also apply when we dispatch the delivery to the customer without reservation albeit being aware of contrary conditions or conditions of our customer that diverge from our General Terms and Conditions. Our General Terms and Conditions shall only apply to companies, bodies corporate organized under public law, and separate assets under public law.

§ 2 Offer and Conclusion of the Contract

Our offers are subject to change and not binding. Declarations of acceptance and all orders shall require our written confirmation to become valid. The same shall apply to amendments, modifications and subsidiary agreements.

§ 3 Prices

- (1) Prices are quoted ex our subsidiary in Herford or one of our branch offices, unless otherwise expressly stipulated, packing excluded; packing shall be invoiced separately.
- (2) The statutory VAT is not included in our prices; it shall be stated separately in the invoice at the statutory rate on the date of invoice.
- (3) We reserve the right to modify our prices accordingly in the event that cost reductions or cost increases should occur subsequent to the conclusion of the contract, in particular due to labor agreements or alterations in material prices. For these, we shall provide evidence on the customer's request.

§ 4 Delivery Time and Time of Performance as well as Retaining Lien

- (1) The adherence to our delivery obligations presupposes the performance of the customer's obligation in a timely manner and in due form. The plea of non-performance is reserved.
- (2) In the event of the customer's default in taking delivery or in the event that the customer should culpably infringe other performance obligations, we shall be entitled to demand indemnification for damages that have accrued to this extent, including possible additional expenditures. We reserve the right to any further claims or rights.
- (3) Provided that the prerequisites as stated in section (2) exist, the risk of accidental loss or accidental deterioration of the merchandise shall be subrogated to the customer at the time when he has got into default of acceptance or debtor's delay.
- (4) We shall be liable according to the legal requirements to the extent as the underlying sales contract is a time bargain in terms of § 286 section 2 no. 4 BGB [German Civil Code] or in terms of § 376 HGB [German Commercial Code]. We shall also be liable according to legal requirements provided that, as a consequence of a delay in delivery that is attributable to us, the customer is entitled to assert that his interest in further performance of the contract has ceased.
- (5) We shall furthermore be liable according to legal requirements provided that the delay in delivery is based upon a breach of contract that is attributable to us because we caused it with intent or due to gross negligence. A fault of our representatives or vicarious agents shall be attributed to us. Provided that the delay in delivery is due to a breach of contract due to gross negligence that is attributable to us, our liability for indemnification is limited to typical foreseeable-occurring damages.
- (6) We shall also be liable according to legal requirements to the extent as the delay in delivery that is attributable to us is due to the culpable infringement of a fundamental contractual obligation. In this case, however, liability shall be limited to typical foreseeable-occurring damages.
- (7) Moreover, we shall be liable in the event of delay in delivery for each full week of delay within the scope of a lump-sum compensation for damage resulting from undue delay in the amount of 0.5 % of the value of goods delivered, which shall not, however, exceed the maximum of 5 % of the value of goods delivered.
- (8) To the extent as the Service Level Agreement provides for partial performances, the contractor shall be entitled to retain further partial performances if the customer defaults in settling the payments for approved partial performances as agreed upon.
- (9) The contractor is entitled to retain his performances if the customer is into arrears on payment for more than two months.
- (10) The customer is aware of the fact that this retaining lien shall result in the fact that the performances agreed upon shall no longer be possible. This may have far-reaching impact on the customer's business operation.
- (11) The retaining lien must be announced in writing, and the consequences must be pointed out simultaneously.

§ 5 Passing of Risk

Unless otherwise specified in the confirmation of the order, delivery "ex works" is agreed upon. The risk shall be passed to the customer when the merchandise is loaded albeit delivery free of carriage charges was agreed upon and/or the shipment is carried out with our own vehicles. For damages or loss in the course of transport we shall only be liable within the scope of the present General Terms and Conditions.

§ 6 Retention of Title / Resale of Merchandise

- (1) We reserve the right of property in merchandise until the receipt of all payments (including any balance claims from current account) deriving from the business connection with the customer.
- (2) The customer is obligated to handle the merchandise with care. Provided that maintenance and technical service are required, the customer is obliged to carry out these tasks at his own expenses in due time.
- (3) In the event of levy of execution or other interventions by third parties, the customer is obliged to give us notice in writing without delay in order for us to be able to file suit according to § 771 ZPO [Code of Civil Procedure]. To the extent as the third party is not able to reimburse us for court fees as well as for extrajudicial costs for a lawsuit according to § 771 ZPO [Code of Civil Procedure], the customer shall be liable for the loss we have incurred.
- (4) The customer is entitled to resell the merchandise in the ordinary course of business. He already now assigns all claims in the amount of the total amount of the invoice (including VAT) of our claim that accrue to him from the resale against his customers or third parties, irrespective of whether the merchandise was resold without any processing or subsequent to processing. In the event that a current account relation exists between the customer and his customer according to § 355 HGB [German Commercial Code], the claim the customer has assigned in advance shall also refer to the approved balance as well as to the causal balance that will exist in the case of the customer's bankruptcy. The customer shall be authorized to the collection of these claims also subsequent to the assignment. Our authorization to collect the claims ourselves shall remain unaffected. We shall be liable, however, to not collect the claim as long as the customer complies with his payment obligations from the proceeds collected; does not default in payment, and in particular no petition in insolvency proceedings or in bankruptcy has been filed or cessation of payment occurs. Should this be the case, however, we shall be entitled to claim that the customer notifies us of the assigned claims and their debtors, gives full particulars required for collection, delivers the corresponding documents and announces the assignment to the debtors (third parties).
- (5) Processing or transformation of the merchandise by the customer shall always be carried out on behalf of us. In the event the merchandise shall be processed together with other objects that are not owned by us, we shall acquire joint property of the new object at the ratio of the value of the merchandise (total amount of the invoice, including VAT), proportional to the other objects processed at the time of processing. For the object that was produced by processing, the same shall furthermore apply as for the merchandise that was delivered with reservation.

- (6) In the event that the merchandise is inextricably mixed with other objects that are not owned by us, then we shall acquire joint property of the new object at the ratio of the value of the merchandise (total amount of the invoice, including VAT) proportional to the other intermixed objects at the time of intermixture. In the event that the intermixture is carried out in a manner that the customer's merchandise has to be considered the main thing, it shall be deemed as agreed that the customer shall assign proportional joint property to us. The customer shall keep the sole property or joint property that has thus been developed on behalf of us.
- (7) The customer shall also assign the claims to us for security of our claims against him which by the combination of merchandise with real estate shall accrue against a third party.
- (8) We shall be liable to authorize the securities that we are entitled to at the customer's request to the extent as the realizable value of our securities exceeds the claims that have to be secured by more than 10 %. The selection of the securities that have to be authorized shall be incumbent upon us.
- (9) For the assertion of the rights from the retention of title, a rescission of the contract shall not be required unless the debtor is a consumer.

§ 7 Payment / Retaining Lien

- (1) Unless otherwise agreed upon in writing, our invoices are due and payable in full within eight days upon the date of invoicing. The legal regulations shall apply with regard to the consequences of default payment. Payment shall only be deemed as effected when we dispose of the entire amount. In the event of checks, payment shall only be deemed as effected after the check has ultimately been cashed. The customer shall only be entitled to set-off rights in the event that his counterclaims were established as final and conclusive, are undisputed or were approved by us. Furthermore he shall be entitled to exercise a retaining lien only to the extent as his counterclaim is based on the same contractual relationship.
- (2) We are entitled to assign the claims of our business connections.
- (3) In the event that the buyer is in delay against us with any obligations to pay, any existing entitlement shall be due immediately.
- (4) To the extent as stated on the invoices, any payment must be made with debt-discharging effect exclusively to VR FACTOREM GmbH, Ludwig-Erhard-Straße 30-34, 65760 Eschborn, Germany, to whom we have assigned our present and future claims of our business connection. We also assigned our goods where the title was retained to VR FACTOREM GmbH.

§ 8 Selection of Our Deliveries and Services

The customer is responsible for the operation and selection of hardware and/or software. It is the customer's task to select the hardware and/or software that is offered according to the service offers in a manner that he shall be capable of making use of the results that can be achieved by the hardware and software for himself. In the event that the customer desires any consulting exceeding the mere product description with regard to selection, configuration or dimensioning of hardware and/or software, the customer and us shall conclude a separate agreement on this in writing.

§ 9 Obligations of the Customer

The customer is obligated to observe the user's guides that are delivered and the instructions that are provided in trainings. Non-contractual use of hardware and software or non-observance of the respective instructions shall be borne by the customer. The customer is obligated in particular to refrain from conducting technical changes without authority. In case of doubt, the customer shall be obligated to check with us and to follow the instructions and details he shall then receive.

§ 10 Obligations with Regard to Consulting and Training

We shall be obligated to instruct the operating personnel with regard to hardware and software on demand in our training rooms according to our offers. According to our offers we shall also perform follow-up trainings on the customer's demand. We shall furthermore be obligated to deliver supplementary details with regard to the operation of the hardware and the software. The training and consulting services that we have to provide to this extent as well as the operation details shall be agreed upon by the customer and us separately, and they shall also be paid for separately.

§ 11 Data Loss

The customer is responsible for the backup of his data at regular intervals, and he is obligated to take the required measures for the backup of his data. Thus, in the event of data loss that is attributable to our fault, we shall be liable solely for the costs for the reproduction of the backup data the customer is obligated to compile and for the retrieval of data which would have also been lost in case the data backup had been carried out according to the rules, unless the loss of the data was caused due to willful intent on our part.

§ 12 Warranty

- (1) The customer's warranty claims presuppose that he complied with his legally due obligations of investigation and his obligations to give notice of defects according to § 377 HGB [German Commercial Code] in due form.
- (2) Provided that a defect of the merchandise exists, we shall be entitled at our option to supplementary performance in the form of the removal of defects or to the delivery of a new object free of defects. In the event of supplementary performance, we shall bear the required expenses only to the amount of the purchase price.
- (3) In the event that the supplementary performance fails, the customer shall be entitled to claim rescission or reduction at his option.
- (4) To the extent as the customer is entitled to a claim for compensation of defects instead of a claim for compensation of performance, our liability shall be limited to the compensation of a typical foreseeable-occurring damage also within the scope of paragraph (3). Any further claims for compensation of defects and claims for compensation of expenses due to legal warranty regulations against us are excluded. This shall not apply provided that intent or gross negligence is held against us and/or in the event of breach of fundamental contractual obligations. In the event of breach of fundamental contractual obligations, the scope of liability shall, however, be limited to the compensation of a typical foreseeable-occurring damage, provided that only ordinary negligence is held against us.
- (5) To the extent that nothing different is hereinbefore mentioned, warranty shall be excluded.
- (6) The statutory period of limitation with regard to warranty claims amounts to 12 months as of passing of the risk.
- (7) The statutory period of limitation in the event of a delivery recourse according to §§ 478, 479 BGB [German Civil Code] shall remain unaffected. The period amounts to five years as of delivery of the faulty object.

§ 13 Supplementary Provisions with Regard to Warranty at Delivery of Software, Condition of Programs

- (1) For software shall apply in particular that to the extent as the customer changes programs himself or has them changed by third parties, claims due to material defects or defects of title shall not apply, unless the customer proves that defects that occurred cannot be attributed to this fact, and that the defect analysis and remedy that we carry out will not hereby be impaired.
- (2) We invite attention to the fact that software generally has a condition according to which it is not guaranteed that it will work uninterrupted or properly in any case. Insofar the software that we deliver possesses a condition that corresponds to the customary average kind and quality. The condition of the programs contains no assertion with regard to profitability, usability or maturity for production.
- (3) In the event of software bugs which significantly impair the use according to the contract, we shall debug - to the extent as we are capable of debugging - according to the bug's significance by installation of a different version of the program or via details for debugging and for the prevention of any impact of this defect.
- (4) In the event that the supplementary performance fails, the customer shall on principle be entitled to claim reduction of reimbursement

- (reduction) or rescission of the contract (rescission) at his option. Claims for compensation due to warranty shall be excluded subject to §12 of the present General Terms and Conditions.
- (5) For the use of software by third party providers which we have not expressly recommended, we shall assume no liability.

§ 14 Joint Liability

- (1) Further liability to indemnification than required in § 12 shall be excluded, irrespective of the legal status of the asserted claim. This shall in particular apply for claims for compensation from culpa in contrahendo, for other breaches of duty or for tortious claims for indemnity for property damages according to § 823 BGB [German Civil Code].
- (2) The limitation according to paragraph (1) shall also apply to the extent as the client claims in lieu of a compensation of defects instead of performance a compensation of futile expenses.
- (3) To the extent as the liability for indemnification against us is excluded or limited, this shall also apply with regard to the personal liability for indemnification of our employees, workers, staff, representatives, and vicarious agents.
- (4) We shall be liable according to the legal regulations provided that the customer asserts claims for compensation that are based on intent or gross negligence, including intent or gross negligence of our representatives and vicarious agents. To the extent as we are not accused of infringement with intent or of breach of contract, the liability for indemnification shall be limited to the typical foreseeable-occurring damage.
- (5) We shall be liable according to the legal regulations provided that we culpably breach a fundamental contractual obligation. A fundamental contractual obligation exists in the event that the breach of duty refers to a duty on the fulfillment of which the customer had relied upon and was also allowed to rely upon.
- (6) Liability for culpable injury to life or culpable injury to body and health shall be unaffected. This shall also apply to mandatory liability according to the Product Liability Act.

§ 15 Property Rights and Licenses

The hardware or software that we sell generally are subject to specific regulations and restrictions on the part of the manufacturer. These must be accepted and observed separately by the customer/client. The customer is not entitled to eliminate, change, cover or obliterate references to copyright, trademarks or other property rights that are attached to the contractual products or parts of these. The reproduction of documentations or other printed material is allowed for internal use only, particularly for the purpose of data backup. To the extent as specific programs are completely or partially protected from reproduction by respective measures, they are labeled "Copy Protected". The customer is obligated to attach the respective references to our licensing right and to our copyright or that of our suppliers to every copy of the program as well as every modification or parts of this program that were integrated into other programs.

§ 16 Assignments of Property Rights and Licenses to Others

The customer shall be entitled to assign the program and its utilization to others only if the customer notifies us of the complete address of the new customer, and if the latter expressly agrees in writing to the property rights and licenses. Moreover, the assignment fee that is valid at that time must be paid. All machine-readable or printed copies that exist, including the originals of the programs must be conveyed to the new customer upon assignment. The licensing rights of the hitherto existing customer shall expire automatically upon assignment to the new customer. The modifications of programs or parts of the programs that were integrated into other programs or documentations that still exist at the previous licensee's and customer's must be destroyed or delivered to us forthwith.

§ 17 Term of the License, Termination without Notice

We shall be entitled to terminate the license agreements without notice, if the customer infringes the trade mark rights or the specified terms of the license agreement. We shall be entitled to the same right if the customer commits material breaches of contract in a different manner. In the event of cancellation of the licensing right, the customer shall be obligated to destroy or to return the program including all copies, modifications and all parts that were integrated into other programs as well as the documentations, and to execute an affirmation in lieu of an oath if necessary.

§ 18 Obligations to Report

The customer is obligated to report the infringement of industrial property rights by third parties forthwith, as soon as this has come to his attention. In the event of an infringement of the obligation to report, the customer must pay a contractual penalty of € 1.000,- to us for every incidence of infringement excluding the continuation of offense.

§ 19 Indemnity against Infringements of Industrial Property Rights

- (1) We shall indemnify the customer and his prospective customers against rightful claims of infringements of copyrights, trade marks or patents against third parties, unless the hardware or software originates from the customer.
- (2) As regards the amount, the indemnity obligation is limited to the amount of the purchase price of the merchandise delivered, provided that no willful intent exists that is attributable to us.
- (3) Supplementary prerequisites for the indemnity obligation are that the conduct of a lawsuit shall be entrusted to us or to our supplier, and that the asserted infringement shall be attributed to our delivery items only without any connection to or use of other products.
- (4) We are optionally entitled to release ourselves from the obligations we assumed by procuring the required licenses or by making modified merchandise or a part of it, respectively, available to our customer that in the case of exchange of the merchandise or part of it, respectively, rebut the charges of infringement with regard to the merchandise.

§ 20 Maintenance of Secrecy

We are obligated to treat the data of the customer that have come to our attention as confidential. The customer shall be obligated to treat all technologies, algorithms and processes that the program or the equipment contain, as well as all documentations, any information and all other records which the customer receives from us, as our trade secret and the trade secret of our suppliers. These shall be permitted to be made accessible to third parties only to the extent as it is required for the use of the program and the system.

§ 21 Applicable Law

The law of the Federal Republic of Germany applies. The provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply. The German wording of the present General Terms and Conditions shall be valid in law.

§ 22 Place of Jurisdiction

In the event that the customer is a merchant, a body corporate organized under public law or a separate asset under public law, the place of jurisdiction shall be the company headquarters or Frankfurt am Main at our option. The same applies in the event that the customer does not have a place of general jurisdiction in Germany.

§ 23 Assignability of Claims

The person ordering is not entitled to assign his contractual claims. In the event that the person ordering gives significant reasons that require an assignment of his contractual claims, we shall be prepared to agree in writing in the event of written information being provided.